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No. 548

# In the Supreme Court of the United States

OCTOBER TERM, 1952

HARRY RENTON BRIDGES, HENRY SCHMIDT AND J. R. ROBERTSON, PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES

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### OPINIONS BELOW

The opinion of the Court of Appeals, as amended on denial of rehearing (R. 8354-8433), is reported at 199 F. 2d 811. The opinion of the United States District Court for the Northern District of California denying a series of motions to dismiss the indictment (R. 10-41) is reported at 86 F. Supp. 922. The opinion of that court on the issue of *res judicata* raised during the trial is reported at 87 F. Supp. 14.[1]

[1] See also opinions on revocation of bail after judgment, 93 F. Supp. 989, reversed, 184 F. 2d 881.

## JURISDICTION

The judgment of the Court of Appeals was entered on September 6, 1952 (R. 8296). A petition for rehearing was denied on November 18, 1952 (R. 8434). On November 28, 1952, the time for filing a petition for a writ of certiorari was extended to January 16, 1953, by order of Mr. Justice Douglas. The petition was filed January 14, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

## QUESTIONS PRESENTED

1. Whether the fact that two previous attempts to deport an alien because of alleged communist activity had failed precludes a prosecution relating to false statements in his naturalization proceedings with respect to membership in the Communist Party.

2. Whether the prosecution is barred by the statute of limitations.

3. Whether reversible errors were committed during the trial.

## STATUTES INVOLVED

The applicable statutes are set forth in the Appendix, *infra*, pp. 37-40.

## STATEMENT

On May 25, 1949, an indictment in three counts was returned against the petitioners in the United States District Court for the Northern District of California. Count one charged all three petitioners with conspiracy to defraud the United States in the proper administration of its naturalization laws by fraudulently representing, in the proceed-

ings for the naturalization of Harry Bridges, that he had never belonged to the Communist Party of the United States. The second count charged Bridges alone with the crime of knowingly making a false statement under oath relating to his naturalization proceedings, in violation of 8 U.S.C. (1946 ed.) 746(a), now 18 U.S.C. 1015 (a). The third count charged the other petitioners with fraudulently aiding and abetting Bridges to procure naturalization in violation of 8 U.S.C. (1946 ed.) 746(a). (R. 3-8.) After a trial by jury, petitioners were found guilty on the counts in which they were named (R. 8036-8038) and sentenced as follows: Bridges to two years on count I and five years on count II, the sentences to run concurrently; each of the other petitioners to two years imprisonment on counts I and III, the sentences to run concurrently (R. 235-240). After judgment was entered, the citizenship of Bridges was revoked under Section 338 (e) of the Nationality Act of 1940, 8 U.S.C. (1946 ed.) 738 (e). On appeal the conviction was affirmed (R. 8296).

At the trial, the Government proved that at his naturalization hearing on September 17, 1945, Bridges was asked whether he did then or ever had belonged to the Communist Party of the United States, and whether he did then or had ever belonged to any organization that advocated the overthrow of the government by force and violence. He replied in the negative (Gov. Ex. 3, R. 480; R. 138-139). It was also shown that the other petitioners, who were witnesses for Bridges in connection with

his application, had been individually questioned by a hearing examiner at a preliminary examination held on August 8, 1945; that each of them had denied that he himself was a member of the Communist Party and had stated that to his knowledge Bridges was not a member of the Communist Party (R. 457-459; 463-464). At the naturalization hearing, the witnesses testified that they vouched for the loyalty of Bridges to the United States (R. 134).

The lengthy evidence adduced by the Government at the trial was designed to show that prior to, at the time of, and subsequent to, these naturalization proceedings, Bridges was in fact an active member of the Communist Party, known to be such by the other petitioners. Salient portions of that evidence may be summarized as follows:

A. *The Recruitment of Bridges into the Communist Party*

In 1933, there was a confused situation in the labor movement on the west coast waterfront, with different groups endeavoring to obtain dominance (R. 4101-4103; 4770-4776). The Communist Party decided to take an active part in the situation and to bolster an A. F. of L. union, the International Longshoreman's Association, hereinafter referred to as I. L. A. (R. 1247-1249). John Schomaker, a government witness and an admitted Communist (R. 674-687), testified that it was decided that Bridges was the best potential leader for the longshoremen's union (R. 887-888, 957, 1247-1249). At a meeting at Bridges' home in late October, 1933,

they discussed revitalization of the I. L. A. (R. 732-736, 819-827).

Thereafter, Schomaker saw Bridges two or three times a week at his home, or another prearranged meeting place, and occasionally going or coming to the waterfront (R. 832-833).

One day during the winter of 1933, when Schomaker and a man named Jones[2] had met Bridges in a restaurant (R. 835-837), Jones asked Bridges, "When are you going to join the Party, Harry?" After some conversation, Schomaker left for 15 or 20 minutes. On his return, he joined Jones and they went to the headquarters of the San Francisco Communist Party. Jones showed Schomaker an application for membership in the Communist Party bearing the signature of Bridges which Schomaker recognized and could identify (R. 841-853). Jones turned in the application at headquarters (R. 863-864, 1224).

Schomaker testified that he saw Bridges on numerous occasions pay his Communist Party dues in accordance with normal Party practice to the unit secretary (R. 873-875).[3] In December, 1935,

[2] Jones testified as a defense witness that he had been a member of the Communist Party since the middle of 1932 (R. 3811).

[3] In the Communist Party, the unit was the home base to which a member was assigned and paid dues (R. 5830). The chairman of the unit, known as a unit organizer, was contact man between the unit and the next higher echelon, the section (R. 683-684). The section organizer was in turn responsible to his district organizer (R. 727-728). In each region, the governing group was the District Committee. The district which included California was known as "District 13". Nationally the Party was governed by the Central or National Committee, of which a small policy-making group was known as the Politburo (R. 2409-24).

after Schomaker had become a section organizer of the waterfront section of the Communist Party (R. 871), Bridges gave Schomaker his Communist Party book to be "controlled." The practice was to turn in the old book and receive a new one. About the middle of January 1936, Schomaker gave new books to each Party member, including Bridges, at a Communist unit meeting (R. 869-870). Again in the winter of 1936, Schomaker received Bridges' old Communist Party book, and issued him a new one in January 1937 (R. 871).

B. *The Participation of Bridges in other Communist Activities During the 1930's*

After the recruitment of Bridges into the Communist Party, he became a member of the District Committee, and of the Bureau, the executive committee of the District Committee (R. 1236-1237). Bridges and petitioner Schmidt were also members of the waterfront section of the Communist Party in San Francisco (R. 5858). Schomaker attended numerous Communist meetings at which Bridges and Schmidt were present (R. 895). The government witness Lawrence Ross, who was county organizer for San Francisco County (R. 2854), testified that he heard Bridges give a talk at a closed meeting restricted to leading Communist Party members about the situation on the waterfront as it concerned the Communist Party (R. 2862-2869, 2886-2887). Bridges and Schmidt attended closed Communist Party meetings at which persons stood at the door to recognize the Communist members as they entered (R. 921-935, 2871-2879).

Two government witnesses, John Schomaker and Irene Patti Harris, described a meeting held at the home of Jack Shaw on Pine Street early in the fall of 1938 at which Bridges gave a speech. Bridges made a plea for the persons present to become members of the Communist Party and told the group that he was a member (R. 1697-1704). Mrs. Harris testified (R. 1704):

> Yes. That made a very impression [sic]. I was flabbergasted when I heard him say that, because he had been accused, and I had heard it denied. And when he made that statement, why, it made a very much impression on me [sic].

See also R. 877-878.

### C. *The Communist Central Committee*

Three witnesses, Paul Crouch, Manning Johnson and Lawrence Ross, described the election of Bridges at the 1936 Communist Convention in New York to what was then the Central Committee of the Communist Party. Bridges was elected under the name of "Harry Rossi."[4] (R. 2355-2357, 2892-2895.)

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[4] This alias of "Rossi," applied to Harry Bridges, grew out of the 1934 general strike in San Francisco (R. 2236-2237). At that time, Sam Darcy reported to a meeting of the National or Central Committee, giving a detailed account of the general strike in San Francisco. In this report, Sam Darcy mentioned that "Comrade Bridges" had wielded more power than Mayor Rossi in San Francisco. Jay Peters, as a result of that, thereupon affixed the alias of "Comrade Rossi" to Bridges. Thereafter, whenever reports were given on activitives in California by the leading organizers, he was referred to as "Rossi". Under the name of Rossi, his name was put on the list of the 1936 convention (R. 2239-2240).

Manning Johnson, who had held a number of posts in the Party, was elected to the National Committee in 1936 (R. 2074-2075, 2080-2083). After his election, he met the other committee members, including Bridges, who went under the alias of "Rossi" (R. 2088). At one closed session, Stachel introduced Bridges to the National Committee, and Bridges received a big ovation (R. 2229, 2234). It was explained that Bridges henceforth would not be brought to meetings of the National Committee because of his strategic position in the labor movement on the Pacific coast, and because, if it became known that he was a member of the Communist Party, he would no longer be able to move and work in the Party interests (R. 2234).

Paul Crouch attended the 1938 national convention. The procedure at this time was different from that of 1936. Prior to the final election session, the Central Committee called a meeting of the district organizers, the editors, and a few top leaders of the Party, to discuss nominations and procedure at the convention. William Schneiderman proposed the name of Bridges, stating that while he was temperamental, he had made an important contribution. Schneiderman thought Bridges would contribute more on than off the Central Committee. At the end, Earl Browder, referring to Bridges, said "Comrade Derkin or Dargan" would be put on the Central Committee. Crouch voted for Bridges. At the convention, in reading the list of nominees, the speaker said, "The next person to go on the Central Committee is a well-known West Coast labor leader," but he did

not mention Bridges' name. Crouch testified that "at that moment the entire convention burst into stormy applause" (R. 2358-2361).

*D. Other Communist Activity in the 1940's*

At the 1941 convention of the California State C. I. O., Crouch, who was then a member of the Bureau of District 13 (R. 2338), was told to see that Bridges carried out decisions of the Political Bureau of District 12, after June 22, 1941, when the Soviet Union was attacked by Germany. There had been a District Bureau meeting in Schneiderman's office on July 9, 1941, at which the policy of the Communist Party toward this issue was discussed, and also the reluctance of Bridges to go along with the Party line. Crouch had made a motion that if it became necessary to expel Bridges from the Party, this was not to be made public (R. 2723-2724, 2737). It was decided to prepare a resolution to be given by Bridges at the 1941 State C. I. O. convention to place him unequivocally on record in favor of the then Communist policy of full support for the allies (R. 2738-2739). The resolution that was given by Bridges at the convention (Gov. Ex. 8; see R. 2367-2368) was prepared by Crouch during the two weeks preceding the convention, at the instructions of District 13 and William Schneiderman (R. 2362-2371). The resolution read by Bridges on the floor of the convention urged all-out support of the administration program of aid to the democracies in the war effort (R. 2367-2368).

After 1944, in San Francisco, there was organized a special committee known as "God's Committee", which consisted of local San Francisco Communists who were connected with the San Francisco C. I. O. Council. Among its members were Schneiderman, Rathborne, who was then secretary-treasurer of the California Council; government witness George Wilson, the secretary of the Bridges Victory Committee; and petitioner Robertson, an officer of the International Longshoremen's and Warehousemen's Union. On a number of occasions, Rathborne discussed the activities of this committee with Bridges and Schneiderman together (R. 3640, 5834, 5842-5843, 5930-5933).

The government witness George Wilson attended Communist meetings in 1944 and 1945 with petitioner Robertson, who was attached to the same Communist unit (R. 3647-3648). He also attended other meetings at which Bridges and Schmidt were present (R. 3649-3652).

ARGUMENT

1. Petitioners contend (Pet. 7-14) that the indictment instituting the present prosecution is barred under the principles of *res judicata*, estoppel, or the due process provision of the Fifth Amendment (Pet. 3, 7-14). This contention assumes that there was a previous adjudication of fact which precluded an examination into whether petitioner Bridges swore falsely when on September 17, 1945 he stated to the naturalization court that he did not then, and had never, belonged to

the Communist Party in the United States. To establish a prior adjudication of this issue, petitioners cite two deportation proceedings commenced in 1938 and 1940, against petitioner Bridges more particularly described in *Bridges* v. *Wixon*, 326 U. S. 135, 137.

The first proceeding was instituted in 1938 on the ground that Bridges, who was then an Australian alien, had been and then was a member of or affiliated with the Communist Party of the United States and that that Party advised and taught the overthrow by force of the Government of the United States. Under the statute then in force, past membership or past affiliation was insufficient for deportation, present affiliation being required. *Kessler* v. *Strecker*, 307 U. S. 22. A hearing was had before an examiner, James M. Landis, who concluded that the evidence established neither that Harry Bridges "is a member of nor affiliated with" the Communist Party of the United States. The Secretary of Labor sustained the examiner and dismissed the proceedings in January 1940.

By the Act of June 28, 1940,[5] Congress amended the statute to provide for deportation of any alien who was "at the time of entering the United States, or has been at any time thereafter," a member of or affiliated with an organization of the character attributed to the Communist Party in the first proceeding. A second deportation proceeding was instituted against Bridges under the amended stat-

[5] 40 Stat. 1012, 41 Stat. 1008, 54 Stat. 673, 8 U.S.C. 137.

ute on the ground that he had been a member of or affiliated with that organization. Another hearing was had before the inspector designated to conduct the hearings, Charles B. Sears, who found that the Communist Party of the United States was an organization of the character described in the statute, that the Marine Workers' Industrial Union was affiliated with the Communist Party and was an organization of the same character, and that after entering this country Harry Bridges had been affiliated with both organizations, and had been a member of the Communist Party. He recommended deportation. The case was heard by the Board of Immigration Appeals which found that Bridges had not been a member of or affiliated with either of those organizations at any time after he entered this country. The Attorney General reviewed the decision of the Board, and rendered an opinion in which he made findings in accordance with those proposed by the inspector and ordered Harry Bridges to be deported. Bridges, after surrendering himself to the custody of the District Director of the Immigration and Naturalization Service, challenged the legality of his detention by a petition for a writ of habeas corpus in the District Court for the Northern District of California. That Court denied the petition and remanded petitioner to the custody of the Director. *Ex parte Bridges*, 49 F. Supp. 292. The Court of Appeals for the Ninth Circuit affirmed the judgment of the trial court. *Bridges* v. *Wixon*, 144 F. 2d 927. This Court reversed the judgment below on two grounds, neither of which went to the

merits of the deportation order. The first ground was that Judge Sears and the Attorney General had misconstrued the term "affiliation" as employed in the statute there involved; the second, that the hearing was unfair by virtue of the fact that certain unsworn statements of the government witness O'Neil were read into the record as substantive evidence, and not merely for the purposes of impeachment. *Bridges* v. *Wixon*, 326 U. S. 135, 156.

The decision of this Court in *Bridges* v. *Wixon* was thus not a determination that Bridges was not a member of the Communist Party, nor even a determination that the evidence was insufficient to prove that he was a member of the Party.[6] It was

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[6] Petitioners' statement that "this Court clearly held that the record contained no substantial evidence, in support of the charge of Communist Party membership, against Bridges" (Pet. 11) is even more clearly contrary to the specific language of the decision. After finding that certain evidence had been improperly received, this Court stated, 326 U. S. at 155-156:

> * * * Whether the finding would have been made on this record from the testimony of Lundeberg alone is wholly conjectural and highly speculative. Not only was Lundeberg admittedly hostile to Bridges. Not only did the Attorney General fail to rule that on the basis of Lundeberg's testimony alone Bridges had been a member of the party. But beyond that, the Board of Immigration Appeals significantly concluded that apart from O'Neil's unsworn statements the evidence of Bridges' membership was too flimsy to support a finding. It is thus idle to consider what the Attorney General might have ruled on the basis of the other evidence before him. Cf. *United States* v. *Dunton*, 291 F. 905, 907. The issue of membership was too close and too crucial to the case to admit of mere speculation. Since it was error to admit O'Neil's unsworn statements against Bridges, since they were so crucial to the findings of membership, and since that issue was so close, we are unable to say that the order of deportation may be sustained without them.

merely a determination that the hearing at which he had been found to be a member of the Communist Party was not properly conducted, and therefore in legal effect no hearing at all. Manifestly, such a holding is not an adjudication of the facts which were in issue at that hearing.

In any case, there is no room for the application of the principles of *res judicata*, even assuming that those principles, which have never been applied to deportation proceedings, pertain.[7] Manifestly the administration charge that Bridges was subject to deportation in 1938 and 1940 is not the same as the criminal charge that he conspired to defraud the United States, and made a false oath in his naturalization proceeding in 1945. Thus the doctrine of *res judicata* in the strict sense of binding the parties as to every issue which could have been raised is wholly inapposite. *Commissioner* v. *Sunnen*, 333 U. S. 591, 597-598.

Nor is petitioner aided by the principle of collateral estoppel which applies "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." *Commissioner* v. *Sunnen*, *supra*, and cases cited. At most, what was decided in the prior proceedings was that Bridges had not been shown to be a member of the Communist Party before

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[7] See *Pearson* v. *Williams*, 202 U. S. 281; *Flynn ex rel. Ham Loy Wong* v. *Ward*, 95 F. 2d 742 (C. A. 1); *Mock Kee Song* v. *Cahill*, 94 F. 2d 975, 977 (C. A. 9). Since, even on the assumption that *res judicata* applies to administrative determinations, there is no room for its application in the present case, the conflict which petitioners allege (Pet. 9-10) is not here involved.

1940. The issue as of 1945 when Bridges swore that he was not a member, was, of course, not at all involved in those proceedings. Thus the Government did not attempt to re-litigate any issue actually decided in the deportation hearings.[8] There was here less possibility of re-litigation of decided facts than was presented in *United States* v. *Williams*, 341 U. S. 58, where this Court found an acquittal of a substantive crime no bar to a conviction for perjury at the trial. See also dissenting opinion of Mr. Justice Douglas, *United States* v. *Williams*, 341 U. S. 70, at pp. 95-96.

Petitioners also contend (Pet. 13) that the decree naturalizing Bridges was itself conclusive of the fact "of non-membership in the Communist Party." But any finding that may be implicit in the Court's decree was induced by the very fraud which is now under attack in this proceeding. It would indeed be an odd application of the principle of *res judicata* to bar the Government from protecting the integrity of its own proceedings on the ground that the final order in those proceedings precludes a further inquiry, criminal or otherwise, as to whether the legal processes had been abused. There can be no question of the power of the courts to undo a decree which has been reached through fraud. *Knauer* v. *United States*, 328 U. S. 654; *cf. Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238. The issue of fraud "* * * was not in issue in the

[8] To establish the falsity of the 1945 statement the Government did not rely on the evidence which had been introduced at the prior deportation hearings. All of the government's witnesses were new.

proceedings and neither was adjudicated nor could have been adjudicated" (*Knauer* v. *United States*, 328 U. S. 654, 670-674). Just as the certificate of naturalization may be cancelled on a showing of fraud and illegality in its procurement, so the parallel criminal sanctions under the Nationality Act may be imposed for the perpetration of the same fraud, specifically for the false swearing in the case at bar. *Cf. Klapprott* v. *United States*, 335 U. S. 601, 610 (opinion of Mr. Justice Black).

The argument that the present indictment, following the prior proceedings, violates the Fifth Amendment (Pet. 13-14) certainly cannot be sustained on the basis of double jeopardy. It is perfectly clear that the prior deportation proceedings were not penal in nature (*Fong Yue Ting* v. *United States*, 149 U. S. 698), and it is equally clear that even if the same conduct were involved in the two proceedings (an assumption contrary to the fact), the double-jeopardy prohibition does not apply to non-criminal sanctions (*Helvering* v. *Mitchell*, 303 U. S. 391). The general argument that repetitious proceedings against an individual on the same charge violate the Fifth Amendment (Pet. 14) is merely another method of stating the *res judicata* argument with constitutional overtones. The answer was given by this Court in *United States* v. *Williams*, 341 U. S. 58.

2. Petitioners contend that trial on an indictment returned in 1949 for offenses committed in 1945 was barred by the three-year statute of limitations (18 U. S. C. 3282, *infra*, p. 39) incorporated into the Criminal Code by the Act of June 25, 1948,

62 Stat. 683, 828. The Government contends, however, and both courts below held, that the Wartime Suspension of Limitations Act (18 U. S. C. (1948 rev.) 3287) suspended the running of the statute of limitations until December 31, 1949.[9] In addition, we believe that the saving provision of the Act of June 25, 1948, revising Title 18 (Section 21, 62 Stat. 862), preserved as to counts 2 and 3 the earlier five-year statute of limitations (8 U. S. C. 746 (g), *infra*, p. 38) applicable in 1945 to offenses against the naturalization laws.[10]

(a) *The Suspension Act is applicable.*

(1) *Fraud is a necessary element of each of the offenses charged.*—The pertinent provisions of the Suspension Act suspend the operation of the statute of limitations as to offenses "involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not * * *" (Appendix, *infra*, p. 39). We submit that all three counts of the indictment charge offenses which involve fraud against the United States.

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[9] The President proclaimed the cessation of hostilities on December 31, 1946 (12 F. R. 1).

[10] The trial court in denying a motion to dismiss the indictment based its holding in part on the applicability of the five-year provision of 8 U. S. C. (1946 ed.) 746 (g), *infra*, p. 38). *United States* v. *Bridges*, 86 F. Supp. 922, 926-927. The Court of Appeals for the Ninth Circuit in a prior opinion upheld the district court, but on rehearing, reversed itself to hold that the savings clause preserved only the penal provisions 8 U. S. C. (1946 ed.) 746(a)(1), 746(a)(5)), and not the special five-year statute of limitations incorporated in the same section, 8 U. S. C. 746 (g). *Bridges* v. *United States*, 199 F. 2d 811, 819-820.

Count one charges a conspiracy to defraud the United States, a crime requiring proof of specific intent to defraud the United States. Cf. *Jordan* v. *De George*, 341 U. S. 223, 232; *Glasser* v. *United States*, 315 U. S. 60, 66-67; *Hammerschmidt* v. *United States*, 265 U. S. 182, 187; *United States* v. *Hirsch*, 100 U. S. 33, 35. Under the prototype of the present legislation, the 1921 proviso to R. S. 1044 (Appendix, *infra*, p. 40), this Court in *United States* v. *Novack*, 271 U. S. 201, cited the conspiracy statute, R. S. 37, as an illustration of an offense (p. 204) "* * * in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense." See also *Miller* v. *United States*, 24 F. 2d 353, 360 (C.A. 2), certiorari denied, 276 U. S. 638; *Falter* v. *United States*, 23 F. 2d 420 (C.A. 2), certiorari denied, 277 U. S. 590.

The third count against petitioners Schmidt and Robertson was laid under Section 346(a)(5) of the Nationality Act (Appendix, *infra*, p. 38), which made it a felony to aid any person not entitled thereto to obtain a certificate of naturalization "knowing the same to have been procured by fraud * * *". Manifestly this involves fraud.

Only the statute involved in the second count against Bridges alone, making it a felony "knowingly to make a false statement under oath" in a naturalization proceeding (Section 346(a)(1) of the Nationality Act, Appendix, *infra*, p. 37) does not in terms use the word fraud. We submit, however, that fraud is clearly "involved" within the meaning of the Suspension Act.

This Court has long recognized that false swearing in a naturalization proceeding—invariably involving as it does a deceit directed at the United States through which the rights which attach to citizenship, and the documents evidencing those rights, are obtained—is a fraud against the United States. *Knauer* v. *United States*, 328 U. S. 654, 671-673; *United States* v. *Ness*, 245 U. S. 319, 324; see also *Del Guercio* v. *Papko*, 160 F. 2d 799 (C.A. 9); *Schwinn* v. *United States*, 112 F. 2d 74 (C.A. 9), affirmed, 311 U. S. 616; *United States* v. *Saracino*, 43 F. 2d 76 (C.A. 3); *United States* v. *Choy Kum*, 91 F. Supp. 769 (N.D. Calif.). This provision is not like the general perjury statute, where the offense as defined may not necessarily involve the United States. Cf. *United States* v. *Noveck*, 271 U. S. 201. Here the false swearing must be in connection with obtaining a valuable right from the United States. An intent to defraud the United States may be inherent in statutory language although not spelled out in any set formula of words. *Weinhandler* v. *United States*, 20 F. 2d 359, 360-361 (C.A. 2), certiorari denied, 275 U. S. 554. The absurdity of giving controlling weight to the use of the word "fraud" as against the substance of the crime defined, is well illustrated by this case, for on such theory, the aiders and abettors could be prosecuted in count 3, since Section 346(a)(5), *infra*, p. 38, used the word "fraud" but the principal could not.

(2) *Fraud, under the Suspension Act, does not import a propriety or pecuniary loss to the govern-*

*ment.*—Petitioners also urge that the Suspension Act applies only to crimes involving a pecuniary or proprietary loss to the government, relying on *Marzani* v. *United States*, 168 F. 2d 133 (C.A. D.C.), affirmed by an equally divided Court, 335 U. S. 895, and reaffirmed by an equally divided Court on reargument, 336 U. S. 922.[11] In that case the Court of Appeals reversed certain counts, not necessary to sustain the judgment, on the ground that the suspension provision was inapplicable to a prosecution under the False Claims Act, for falsely swearing to the Federal Bureau of Investigation, that the defendant had never been a member of the Communist Party. The court based its holding that the fraud contemplated by the Suspension Act must involve pecuniary or proprietary loss to the government because of the court's conception of *United States* v. *Novcck*, 271 U. S. 201; *United States* v. *McElvain*, 272 U. S. 633; and *United States* v. *Scharton*, 285 U. S. 518. None of these cases, however, supports the result reached. In the *Novcck* case, as we have pointed out (*supra*, p. 18), this Court referred specifically to the general conspiracy statute as an example of a statute in which fraud against the United States was an ingredient. It is significant that this particular statute should have been referred to because by the

[11] Marzani's petition for a writ of certiorari to this Court did not raise the question of the suspension provision. The government argued, as independent grounds for affirmance of the judgment, that the counts reversed below had improperly been held not to fall within the Suspension Act, but, in the absence of an opinion by this Court it is impossible to tell whether this Court deemed that question properly before it.

time the *Noveck* case was decided, the contention that there could be no conspiracy to defraud the United States without an aim to deprive it in a pecuniary or proprietary way had long been discarded. *Haas* v. *Henkel*, 216 U. S. 462; *Curley* v. *United States*, 130 Fed. 1 (C.A. 1), certiorari denied, 195 U. S. 628.[12]

(3) *The Conflict on the Applicability of the Suspension Act.*—Although, for the reasons set forth above, we believe the decision below is correct, it is in conflict with the decision of the Second Circuit in *United States* v. *Obermeier*,[13] 186 F. 2d 243, 256-257 (C.A. 2), certiorari denied, 340 U. S. 951, on the question whether Section 346(a)(1) of the Nationality Act, upon which the second count is based, defines a crime involving fraud within the meaning of the Suspension Act. It also conflicts in principle with the holding in *Marzani* v. *United States*, *supra*, that fraud against the United States

[12] Petitioner's reliance upon this Court's recent decision in *United States* v. *Beacon Brass Co.*, 344 U.S. 43, is misplaced. In holding that the indictment there involved, alleging a willful attempt to evade taxes under Section 145(b) of the Internal Revenue Code—an attempt which was probably also a violation of former Section 35(a) of the Criminal Code—stated an offense within Section 145(b), this Court observed that the three-year statute of limitations applicable to offenses under Section 35(a) had run. 344 U.S. at p. 45. But the possibility that the statute had been tolled by the suspension statute was neither raised nor presented for decision in that case.

[13] The *Obermeier* case involved three counts, one of which was timely without regard to the Suspension Act. Since concurrent sentences had been imposed on all three counts, the holding of the Court of Appeals as to the Suspension Act affected only a $1,000 fine imposed in addition to the prison term on one of the counts held barred. This Court denied not only the Government's petition but also a petition by Obermeier with respect to the count on which his conviction was upheld.

within the meaning of the Suspension Act must involve pecuniary or proprietary loss.

The conflict relates to a matter of diminishing importance. In view of the proclamation of cessation of hostilities on December 31, 1946, the terminal date under the Suspension Act for the prosecution of offenses committed before that date and normally subject to the three-year statute of limitations was, in the government's view, December 31, 1952, and December 31, 1949, in the view taken by the Court of Appeals for the Second Circuit in *United States* v. *Klinger*, 199 F. 2d 645, petition for a writ of certiorari pending, No. 527. While we stated in the petition for certiorari in the *Klinger* case that there are over one hundred prosecutions which may be effected by the question there raised, that number represents all indictments for offenses considered covered by the Suspension Act which were returned between December 31, 1949 and December 31, 1952. Most of those involve offenses clearly falling within the terms of the Suspension Act, such as cases arising under the Surplus Property Act or cases clearly involving pecuniary fraud.[14] While we have no exact figures on the breakdown, we know of no other cases arising under the Nationality Act which would be affected by the conflict with the *Ober-*

[14] As set forth in our Statement as to Jurisdiction, *United States* v. *Grainger*, this Term, involving a false claim as distinguished from a false statement under former Section 35(A) of the Criminal Code, is such a case. The statements under the heading, "The Question is Substantial," in the jurisdictional statement in that case, referred to by petitioners (Pet. 19), have reference to the merit of the issue raised, rather than to its importance.

*meier* decision.[15] The conflict with *Marzani* on the issue of the necessity of showing pecuniary fraud covers a broader field, but still far less than the total of one hundred cases referred to above.

(b). *The running of the five-year statute of limitations applicable to counts two and three of the indictment was preserved by a saving provision in its 1948 repealer.*

At the time of the commission of the crimes charged in counts two and three, the penal provisions of the Nationality Act were governed by a special 5-year statute of limitations (8 U. S. C. (1946 ed.) 746(g), *infra*, p. 38) incorporated in the same Section of the Act which defined the various nationality crimes. If the 5-year limitations period controls the prosecution of offenses defined by 8 U.S.C. 746(a)(1), *infra*, p. 37, and 746(a)(5), *infra*, p. 38, the prosecution which was instituted by the filing of the indictment on May 25, 1949 was timely instituted as to these two counts.

Despite the decision of the court below (which reversed itself on this point on rehearing), and the opinion in *United States* v. *Obermeier*, 186 F. 2d 243 (C.A. 2) certiorari denied, 340 U. S. 951, the government's view is that the saving provisions in the repealer (Section 21 of the Act of June 25,

[15] We contend, *infra*, that, despite the holding in *Obermeier* and in the decision below, the five-year limitations period of 8 U. S. C. (1946 ed.) 746(g) should be held applicable to a prosecution, such as this, for an offense under the Nationality Act which occurred prior to the revision of the Criminal Code in 1948.

1948, 62 Stat. 683) saved this special 5-year statute.

Section 21 provides in part:

> The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal. * * *. [Among the sections so repealed was the limitation provision of Section 346(g) of the Nationality Act of 1940, *supra*.]

The reasoning of the *Obermeier* opinion is that Congress intended to preserve the *status quo* only as to so-called "substantive" matter in the repealed Criminal Code and to discard the "procedural". On this premise, although Section 346(a)(1), and (a)(5) survive the repeal with respect to acts committed before the repealer in 1948, subsection (g) of the same Section, does not.

This artificial attempt to limit the saving provision of Section 21 to "substantive" matter destroys its obvious intent of preserving the *status quo* on earlier offenses. The process of simplifying and clarifying the law would be fairly painful if subsequently enacted provisions were constantly intermingling with the earlier provisions. The new provisions—particularly in a complete codification—establish their own independent structure and do not fit together with the contradictory earlier provisions. For this reason, it is normally appropriate to leave the earlier provisions as they

stand applicable to cases antedating the change in the law, and simply to permit the passage of time to make their unsatisfactory details no longer relevant. This is particularly true as to a special statute of limitations such as Section 346(g) of the Nationality Act. For that reason, newly enacted statutes of limitations are construed to operate prospectively, absent some direction to the contrary. *United States* v. *St. Louis, San Francisco & Texas Ry. Co.*, 270 U. S. 1. *Fullerton-Krueger Lumber Co.* v. *Northern Pacific Ry. Co.*, 266 U. S. 435; *United States Fidelity & Guaranty Co.* v. *United States for the use of Struthers Wells Co.*, 209 U. S. 306.

Furthermore, the reasoning in *Obermeier*, on which petitioners rely, assumes the postulate that a statute of limitations is merely a procedural provision and therefore cannot be a "right or liability" within the meaning of the saving provision. We do not believe that the word "liability" includes only the bare language defining a particular offense. Section 21 has been given a broader meaning to include all matters which limit the punishment of a crime in any way. We believe such meaning was intended by Congress. Cf. *Hoiness* v. *United States*, 335 U. S. 297, 300-301; *Hiatt* v. *Hilliard*, 180 F. 2d 453 (C.A. 5); *United States* v. *Kirby*, 176 F. 2d 101 (C.A. 2); *Lovely* v. *United States*, 175 F. 2d 312 (C.A. 4), certiorari denied, 338 U. S. 834. The term liability was used, not only to preserve the mere formal definitions of the crime, but also all of the elements which limit

the punishment to which the defendants became liable on commission of the acts charged. *United States* v. *Reisinger,* 128 U. S. 398; *United States* v. *Ulrici,* 28 Fed. Cas. p. 328, No. 16,594, 3 Dillon 532, 534; *People* v. *Driessen,* 178 Mich. 118, 144 N. W. 526.

In a recent case this Court, dealing with a comparable issue arising under Section 13 of the Revised Statutes (1 U. S. C. 109), stated:

> * * * But where the object of Congress was to destroy rights in the future while saving those which have accrued, to strike down enforcing provisions that have special relation to the accrued right and as such are part and parcel of it, is to mutilate that right and hence to defeat rather than further the legislative purpose. * * *. [*De La Rama SS. Co.* v. *United States,* No. 368, this Term, decided February 2, 1953.]

Finally, even if the word liability saved only substantive liabilities, whatever that term means in the abstract, a statute limiting the time within which a defendant may be prosecuted "* * * goes to his liability as a matter of substantive law * * *". *United States* v. *Oppenheimer,* 242 U. S. 85; *United States ex rel. Hassell* v. *Mathues,* 27 F. 2d 137 (E. D. Pa.). There is no reasonable basis for relegating the provision which defines the time during which the United States may bring an action, and the defendant remains liable to prosecution, to the category of procedural matters which do not in any way limit rights and liabilities.

3. Petitioners make four arguments to show that

they have been unconstitutionally denied a fair trial.

(a) It is contended that the trial court erred in refusing to accept in evidence the Supreme Court's opinion in *Bridges* v. *Wixon*, 326 U. S. 135, apparently offered on the theory that the opinion justified petitioners Robertson and Schmidt in believing that Bridges was not a Communist. Both testified to this effect at the trial. Thus Schmidt testified (R. 4225-4226):

> Q. Well, Mr. Schmidt, in this case you are charged with entering into a fraudulent conspiracy to deceive our Government and to evade the laws of the United States. Will you tell us, please, what were your bases for making those answers as you gave them, and what were your reasons?
>
> A. Well, No. 1: My very long association through the years with Harry Bridges in our trade union activity, which came to mean that this man is engaged in the same sort of activity which I happen to be engaged in, which has as its objective to improve the standard of living of the workers, and I didn't think that that was a bad thing; and, secondly, I had read the decision of the Supreme Court, and I thought, well, as long as the highest tribunal in the United States of America has made a decision with respect to this case, the matter is now settled for all time; and I had no hesitation to recommend this man for citizenship.[16]

[16] See also Schmidt's testimony at R. 4617 to the effect that "I studied the majority decision and I studied the concurring decision, and I made up my mind then and there that President

Robertson testified substantially to the same effect at R. 4617-4618, 4624-4625.

Since, as pointed out above, the opinion in actuality did not pass on the factual issue as to whether Bridges was a member of the Communist Party, permitting the opinion to be read in evidence would hardly serve to bolster this testimony. Its exclusion could not therefore have been prejudicial to the petitioners. Certainly the admission of the opinion would have confused the jury and necessitated an attempt to explain its significance in relation to the jury's fact-finding function.

Moreover, the evidence shows that all three petitioners met together in Communist meetings after 1940, and that each knew that the other was a Communist (see, for example, R. 3646-3652). Robertson, besides being an officer of the International Longshoremen's and Warehousemen's Union, was a member of the special committee of the Communist Party in San Francisco known as "God's Committee" after 1944 (R. 5834, 5842, 5930-5931). Schmidt, who played a prominent part in various Communist meetings over decades, was a Communist Party member at least as early as May 1934 (R. 1312-1314). The Supreme Court's decision in *Bridges* v. *Wixon, supra,* obviously had no bearing on what these petitioners knew about the activities of Bridges in the Communist Party.

(b) Petitioners next contend that the trial court committed prejudicial error in addressing certain

Bridges was not, had never been, and was never affiliated with the Communist Party; and the Supreme Court of the United States is something that I think speaks with authority."

questions to the defense witness, Father Paul Meinecke, which they say tended to indicate that the priest was mentally unbalanced (R. 4380-4381), and in giving certain instructions to the jury with respect to these questions, which they say compounded the error (R. 4387).

Father Meinecke, a Catholic priest who had been stationed in San Francisco but subsequently transferred to a small town in Nevada, was called as a character witness for Bridges (R. 4352-4355). He testified that the reputation of Bridges for truth, honesty, and integrity "is of the best" but qualified this answer by saying that this was his "personal opinion" based on personal association (R. 4358). The Court questioned the witness as follows (R. 4380-4383):

> Q. Do you have difficulty, Father, with your memory or recollection under ordinary conditions?
>
> A. In Nevada there are no clocks and no calendars. We don't know one day from another, and it is easy for one to become careless about pegging dates, although I wasn't that way when I was here in San Francisco.
>
> Q. In San Francisco, Father, you were perfectly conversant and well oriented, weren't you, with respect to dates and the like?
>
> A. That's right.
>
> Q. Since you went to Nevada your orientation has become poor, has it?
>
> A. No; the years have sort of run together. I say a couple of years ago, and then I remember back, it was 15 years ago.

Q. Have you been recently subjected to medical treatment, Father?

At this point, there was violent protest from defense counsel.[17] The court instructed the jury as follows (R. 4382-4383):

> The Court. Ladies and gentlemen of the jury, I say to you at this stage of the case that the questions that I asked were asked in perfect propriety. Any question I addressed to the priest was born as a result of the examination conducted on direct and cross-examination. Mr. MacInnis invited me to query the priest. At that juncture I refrained from interrogating him.
>
> I say to you that the respect I have for the priest or any priest or any man of the cloth, be he Catholic, Protestant or any other faith or denomination, is not to be reflected upon by anything I asked this man. A witness coming into a court of law, ladies and gentlemen, subjects himself or herself to cross-examination, and when a person responds to direct questions, that person in the course of events is to be and should be subjected to cross-examination. I believe that the questions presented by Mr. Donohue to this priest were dignified and proper. I think that the questions I asked the priest were dignified and proper.

After defense counsel made a motion for a mistrial, the court gave a cautionary instruction which included the following (R. 4386-4387):

[17] The outburst at this point was the basis of the conviction for contempt of one of defense counsel. See *MacInnis v. United States*, 191 F. 2d 157 (C.A. 9), certiorari denied, 342 U.S. 953.

Latterly, in my examination of Father Meinecke some mention was made by counsel concerning the asserted impropriety of a question on my part to the father. I might say to you that that was not born of any desire on my part, nor was it designed to inquire into Father Meinecke's mental processes. Nor was it to reflect upon his integrity. The question was born and conceived out of a desire on my part to accord fairness to the witness, for the reason that mention was made during the course of this testimony that he left San Francisco for Nevada; an inference might be drawn from that departure that it had something to to do with activities in trade unionism and the like. The father on the witness stand volunteered that he asked to be transferred. I merely wanted to inquire, ladies and gentlemen, a very simple question, not born of curiosity on my part, but born of a desire to provide you with all the facts surrounding the father, and it was to the end that I might inquire as to his health. Very many people have to leave large metropolitan areas to go to less burdensome parishes and that was the reason underlying my question.

On the redirect examination (R. 4476-4482), Father Meinecke was questioned by defense counsel as to his memory and his health (R. 4480-4482). The record thus refutes the contention that the court was guilty of prejudicial misconduct.

But even assuming that the court's conduct in regard to the witness, Father Meinecke, constituted error, it was not so prejudicial as to consti-

tute grounds for reversal. As we have indicated, Father Meinecke testified only as to his personal opinion and not as to Bridges' reputation. *Cf.* Wigmore, *Evidence* (3d ed. 1940) § 1980. And in addition to Father Meinecke, there were eleven other character witnesses who testified in Bridges' behalf.

(c) Petitioners next contend that they were prejudiced by an erroneous and improper limitation on the cross-examination of Lawrence Kesler, whom they identified as a "key prosecution witness" (Pet. 21). It appears that Kesler was called to identify a hotel registration card introduced as Government's Exhibit 9, which was relevant to show that another Government witness, Michener, was in San Francisco at a particular time to attend a Communist Party meeting at which Michener had testified that Bridges was also present.

Kesler's direct examination related solely to identifying the card, and stating the circumstances in which he got it from the hotel (R. 3578-3580). His cross-examination also went fully into these circumstances (R. 3584-3598).

Defense counsel then attempted to broaden the inquiry to show the witness' purposes in testifying and to show that the prosecution had withheld the production of the card in order not to be embarrassed by pinning its showing of Bridges' whereabouts to definite dates, on which Bridges might have shown that he was elsewhere. Thus, defense counsel asked (R. 3598):

Q. Mr. Kesler, have you the desire unjustly

and contrary to the facts, to procure a conviction of the defendants in this case?

He stated this to be preliminary to questions designed to determine "this man's motive and interest right now" (R. 3598). He stated further, in defending this question (R. 3599):

> * * * this little card that was put in so inadvertently now, if your Honor please, convicts the officers of the prosecution of fraud, corruption, deceit and concealment, and I will show you how in a moment.

The defense theory apparently was that the failure of Michener, whose presence at the hotel was being shown by the card, to testify himself that he was present on that date, made appropriate and permissible defense cross-examination of Kesler to prove some kind of fraud, dishonesty, or trickery on the part of the prosecution.

But it is clear that these questions went beyond the scope of proper cross-examination. The reasons which might have caused Michener not to testify as to the visit in question to San Francisco are wholly unrelated to the question whether Kesler's testimony-in-chief was credible. The purpose of permitting attacks on credibility is to show that the testimony-in-chief should not be believed. The attacks on Kesler here involved could have had no such effect. The only significance of his testimony on direct was to identify an exhibit whose authenticity is not attacked. The petitioner's challenge to this witness, ostensibly an attack on

his credibility, in fact was an attempt to show that somehow the prosecution was proceeding unfairly and, presumably thereby, to show by indirection that Kesler was not credible. It was surely not an abuse of discretion for the trial court to refuse to permit such cross-examination.

Limitation of cross-examination is peculiarly within the province of the trial court. *Glasser* v. *United States*, 315 U.S. 60, 83; *United States* v. *Fotopulos*, 180 F. 2d 631, 640 (C.A. 9); *Chevillard* v. *United States*, 155 F. 2d 929, 935 (C.A. 9). The extent to which collateral matters can be brought in to test credibility is especially subject to the discretion of the trial court. *United States* v. *Toner*, 173 F. 2d 140, 144 (C.A. 3). Patently, the attempt to bring in evidence as to the whole preparation of the Government's case, the witnesses interviewed, and all of the collateral matters incident to trial preparation, as petitioners here sought to do (R. 3605-7), far transcends any direct test of a particular witness' credibility, and the scope of the narrow issue developed through him on the direct examination.[18]

(d) Petitioners finally contend that prejudicial error was committed when the jury were told that a reasonable doubt was one "for which a good reason can be given" (R. 7885-7886). Their argument

[18] An additional point is made by petitioners, although apparently not as an independent ground of review, that the trial court read certain language from another opinion which, they say, reflected on their counsel. Whatever the significance of the language was, the court advised the jury to disregard it as soon as its possibly prejudicial effect was called to the court's attention (R. 3610).

(Pet. 22-23) takes the language out of context. The whole passage is as follows:

> The term reasonable doubt means a doubt for which a good reason can be given, in light of all the evidence. It means a doubt which is substantial and not merely shadowy. It does not mean a doubt which is merely capricious or speculative. Neither does it mean a doubt born of reluctance on the part of a juror to perform an unpleasant duty, or a doubt arising out of sympathy for a defendant or out of anything other than a candid consideration of all the evidence presented.
>
> Without its being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.
>
> Remember that the defendant or defendants are entitled to any reasonable doubt, as defined, that you may have in your minds; but at the same time also remember that if you have no such doubt, the government is entitled to a verdict.

In context, it is plain that the definition of reasonable doubt is standard, complete, and fair. Cf. *United States* v. *Farina*, 184 F. 2d 18, 21 (C.A. 2), certiorari denied, 340 U.S. 875; *Young* v. *Territory of Hawaii*, 160 F. 2d 289 (C.A. 9), certiorari denied, 331 U.S. 849.

## CONCLUSION

If the conflict on the suspension statute seems to this Court sufficiently important to necessitate

review, then we respectfully submit that the grant of certiorari should be limited to the issue of whether the prosecution is barred by the statute of limitations.

Respectfully submitted,

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APPENDIX

1. Count one of the indictment is based on Section 37 of the Criminal Code, 18 U.S.C. [1946 ed.] 88, in effect at the time the offenses were committed (now 18 U.S.C. [1948 rev.] 371). It provided:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both.

2. Counts two and three are based on Section 346 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 8 U.S.C. 746, which was in effect at the time of the offenses. It provided in pertinent part as follows:

> (a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—
>
> (1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.[19]
>
> * * * * *

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[19] Repealed and superseded by 18 U.S.C. (1948 rev.) 1015(a):

"Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by

(5) To encourage, aid, advise, or assist any person not entitled thereto to obtain, accept, or receive any certificate of arrival, declaration of intention, certificate of naturalization, or certificate of citizenship, or other documentary evidence of naturalization or of citizenship—

a. Knowing the same to have been procured by fraud; * * *

* * * * *

(d) Any person violating any provision of subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than five years, or both.

* * * * *

(g) No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

On September 1, 1948, prior to the return of the indictment on May 25, 1949, the 1948 revision of Title 18, U.S.C., became effective. Section 21 of the act revising Title 18 (June 25, 1948, 62 Stat. 683) provides:

The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.

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virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; * * *

* * * * *

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Among the sections so repealed were Section 346(a)(1) and (a) (5) of the Nationality Act, *supra*, upon which counts two and three were based, and also subsection (g) of the same section, the special five-year limitation provision incorporated into that same section which also defines the various crimes under the Act.

4. Section 3282 of the 1948 revision of Title 18 provides:

> Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed.

5. 18 U.S.C. (1948 rev.) 3287 reads in part as follows:

> *Wartime suspension of limitations.* When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.[20]

The Wartime Suspension of Limitations Act adopted language similar to that contained in a proviso appended to R. S. 1044 by the Act of No-

[20] The President proclaimed the termination of hostilities on December 31, 1946. 12 F.R. 1.

This section appeared in substantially the same form at 18 U.S.C. 590a before the 1948 revision.

vember 17, 1921, c. 124, 42 Stat. 220, which read as follows:

> No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046 [crimes under revenue laws or slave trade laws], unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed: *Provided however, that in offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, the period of limitations shall be six years. This Act shall apply to acts, offenses, or transactions, where the existing statute of limitations has not yet fully run, but this proviso shall not apply to acts, offenses, or transactions which are already barred by the provisions of existing laws.* [Italics supplied.][21]

[21] The italicized language was placed in this section by the Act of November 17, 1921, *supra*. It was eliminated from the section by the Act of December 27, 1927, c. 6, 45 Stat. 51. The section without the italicized language now appears, with slight changes in phraseology, as 18 U.S.C. 3282.